* **HIGH COURT OF DELHI AT NEW DELHI**

+ **CS (OS) No. 2214/2006**

Date of decision : September 26, 2007

N.K.PALIWAL, ADVOCATE ..... PLAINTIFF
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Through : Mr. R.P.Bansal Senior Advocate
Mr. Rakesh Mahajan,
Mr. Prabhat Ranjan,
Mr. Sheetesh Khanna, Advocate

Versus

$ F.C.PAHWA & ORS. .....DEFENDANTS

^ *Through* : Mr. Anil Shrivastav, Advocate

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J. (Oral)

1. Plaintiff has filed the present suit for declaration against the defendants seeking declaration to the effect that defendant No. 3 Ms. Razia S. Ismail Abbasi is not a valid candidate eligible to contest for the post of Secretary General of Indian Council for Child Welfare in the election 2006 and

also declaration to the effect that plaintiff being only valid candidate be declared to be elected as Secretary General of the Indian Council for Child Welfare.

2. Briefly narrated the facts are that defendant No. 2 Indian Council for Child Welfare is a registered society and plaintiff is a life member and voter of the said society at serial No. 9 under Uttranchal State; plaintiff was contesting for the post of Secretary General for the election fixed for 8.12.2006; defendant society has its own constitution and its affairs are run as per the provisions of the constitution; as per Para 5, Schedule-II Bye Laws of the society no candidate can contest for more than one post of office bearers; as per clause 5 Bye Laws, Schedule-II of the society, the returning officer shall scrutinize the nomination papers and declare the names of the valid candidates who will contest the elections for various posts of office-bearers and for membership of the Executive Committee; that elections of the office bearers and members of the executive committee are held in the annual general meeting after every three years; elections for the year 2006 were announced in the General Body Meeting held on 20.9.2006 and date of polling was scheduled as 8.12.2006; defendant No. 1 was appointed as Returning Officer; pursuant to the circular dated 9.10.2006, plaintiff filed his

nomination papers for the post of secretary general and defendant No.3 filed her nomination papers for the post of vice president and secretary general in violation of the provisions of the constitution of the society; defendant No. 3 could not be allowed to contest the elections; while declaring the list of valid candidates, defendant No. 1 returning officer included the name of defendant No. 3 for both the posts as valid and eligible to contest for both the posts of office bearers; had defendant No. 1 acted in accordance with the provision of the constitution and declared defendant No. 3 as not eligible to contest the elections, plaintiff would have been the only candidate for the post of secretary general of the society; defendant No. 1 refused the objection of the plaintiff in violation of the constitution of the society and without making any rectification proceeded with the holding of the elections. Hence the present suit.

3. Defendants have contested the suit of the plaintiff on various grounds, contending, inter alia, that as per clause 5 of the Bye Laws contained in Schedule II, no candidate can contest for more than one post of office bearers but the said bye laws do not in any manner debar a candidate from filing nomination for more than one post of office bearer which must be withdrawn before the date/time for withdrawal of

nomination which in this case was fixed for 22.11.2006-5.00 PM; that it is only after final list of candidates is published after the last date for withdrawal of nomination, it could be cleared as to who were the final candidates contesting for the post of office bearers; that defendant No. 3 though had filed her nomination for more than one post of office bearer but by 22.11.2006 she had withdrawn her nomination for the other post of Vice President and contested only for the post of secretary general; that at the time when the final list was published, defendant No. 3 was shown as contestant for the post of secretary general only and there is no violation of the clause 5 of the bye laws by defendant No.3; that suit of the plaintiff is not maintainable; that objections of the plaintiff were rightly rejected and he was informed that there was no violation of clause 5 of bye laws of schedule II; that there is no cause of action in favour of the plaintiff and suit is therefore liable to be dismissed.

4. Plaintiff in his replication refuted the defence of the defendants as raised in the written statement and reasserted his stand as taken in the plaint.

5. On the pleadings of the parties following issues were framed on 13.8.2007:

1. Whether the nomination papers filed by the defendant No. 3 for the post of Secretary General are in accordance with the rules and bye-laws, if so, its effect? OPD
2. Whether the plaint does not disclose any cause of action against the defendants? OPD

6. No other issue was pressed or claimed. Since the entire case was based on interpretation of rules and bey-laws of the society, counsel for the parties stated that no oral evidence was required.

7. I have heard learned counsel for the parties and have carefully perused the record. My observations on the above issues are as follows:

8. **Issue No. 1**: Learned counsel for the plaintiff submitted that withdrawal from the contest for the post of vice president by defendant No. 3 after declaration/publication and circulation by returning officer of the list of valid candidates eligible to contest is of no consequence as regards the validity of nomination papers is concerned. It is at the stage of scrutiny of the nomination

papers itself returning officer is required to see or check that no candidate had filed nominations for contesting for more than one post to be eligible candidate. Since defendant No. 3 had filed nomination for two different posts, it was the duty of the returning officer at the stage of scrutinizing the nomination papers to cancel the candidature of defendant No. 3 as she had violated schedule II, clause 5 of the bye laws. It is emphasized that withdrawal of the nomination for the post of vice president by defendant No. 3 thereafter is of no consequence and does not make her eligible to contest the elections for the post of secretary general and in case she is allowed to contest the elections it is detrimental to the interest of the plaintiff as he being the only other candidate to be declared as elected secretary general of the society.

9. These submissions are refuted by the learned counsel for the defendants who has submitted that proper interpretation of clause 5 of the bye laws would be that valid candidate is entitled to contest the election when final list is prepared. Since in this case defendant No.3 had withdrawn her nomination for the post of Vice President on the date scheduled for withdrawal of the nominations, she remained contesting candidate only for the post of secretary general. Therefore, there is no violation of the rules and bye laws of

the society and the defendant No. 3 is eligible to contest the elections for the said post.

10. Clause Nos. 5 & 6 of schedule II of the society read as follows:

> 5. The Returning Officer shall scrutinise the nomination papers and declare the names of the valid candidates who will contest the elections for (i) the various posts of Office Bearers, and (ii) for Membership of the Executive Committee. No candidate can contest for more than one post of Office Bearers.
> 6. The Returning Officer will communicate to all members of the General Body the declared valid lists of candidates at least 15 days before the date of elections."

11. After the elections were declared to be conducted on 8.12.2006, nominations were invited from the members of the society to contest the elections for the post of office bearers and for executive members. List of valid candidates for the posts of eight office bearers and fifteen posts for Executive Committee dated 2.11.2006 bearing the time as 9.00 PM Ex. P-3 was taken out by the returning officer. As per this list, defendant No. 3 Ms. Razia Ismail Abbasi filed her nominations for the post of vice president and for the post of secretary general. These nominations were scrutinized by

defendant No.1. Thereafter list of valid nominations Ex.P-4 for fifteen members of the executive committee was published. As per this list, name of Ms. Razia Ismail Abbasi, defendant No. 3, appears only at serial No. 36. This list was published after the withdrawal of the nominations. This is the final list of candidates who were found eligible to contest the elections scheduled for 8.12.2006.

12. Para 5 of schedule II bye laws restrains a candidate from contesting for more than one post of office bearers. It does not restrain a member to file his/her nominations for more than one post. Had defendant No. 3 not withdrawn her nomination for the post of vice president and continued with her nominations for two posts even after the date of withdrawal of nominations, she would have been debarred from contesting elections and her nomination would have been invalid. However, since she withdrew her nomination for the post of vice president, her name has been rightly shown in the list of eligible candidates/contestants in the elections of the society.

13. It is pertinent to mention here that there were two other candidates namely Smt. Kasturi Mahapatra and Prof. B.R. Nayak who had also filed their nominations for two

posts respectively. They withdrew their nominations for one post respectively and as admitted by the plaintiff they were allowed to contest the elections held on 8.12.2006. Their nominations as contesting candidates were never challenged by any of the members including the plaintiff in any Court of law. Plaintiff has tried to convince the Court by stating that he has no locus standi to challenge the nominations of those two persons as he was not contesting for any of those posts for which Smt. Kasturi Mahapatra and Prof. B.R. Nayak had filed their nominations. I am not convinced with his submissions. Plaintiff being member and voter of the society had every right to challenge the nomination of Smt. Kasturi Mahapatra and Prof. B.R. Nayak on the same grounds on which the candidature of defendant No. 3 has been challenged in the suit.

14. Therefore, I am of the considered opinion that the candidature of defendant No. 3 has been rightly accepted by the defendant No.1; returning officer and she was allowed to contest the elections for the post of secretary general in accordance with the rules, regulations and bye laws of the society. Therefore, she has a right to contest the elections for the said post. This issue is accordingly decided in favour of the defendants and against the plaintiff.

15. **Issue No. 2**: One of the objections raised in the written statement is that the plaint does not disclose any cause of action. Perusal of the plaint shows that plaintiff in fact has not disclosed any cause of action in his favour. He wanted a decree of declaration for declaring that defendant No. 3 was not a valid candidate so as to get benefit of being elected as secretary general being the only other valid candidate eligible to contest for the post of secretary general. The entire averments in the plaint do not show any cause of action in favour of the plaintiff and against the defendants so as to file the present suit. This issue is accordingly decided.

16. In view of my discussion on the issues as above, suit of the plaintiff is hereby dismissed. Under the circumstances of the case, parties are left to bear their own cost. Interim order dated 5.12.2006 is hereby vacated. File be consigned.

(ARUNA SURESH)
JUDGE

September 26, 2007
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